

**CALENDAR ITEM
C23**

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12/17/14

S 3

PRC 7067.1

V. Caldwell

**AMENDMENT OF LEASE, TERMINATION AND ISSUANCE
OF AN AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE,
AND CONTINUATION OF RENT**

LESSEE:

Delta Bay Club, LLC

AREA, LAND TYPE, AND LOCATION:

1.58 acres, more or less, of sovereign land in the San Joaquin River, adjacent to 922 W. Brannan Island Road, Andrus Island, Sacramento County.

AUTHORIZED USE:

Continued use and maintenance of a commercial marina known as Delta Bay Marina consisting of approximately 139 covered berths, four double-wide guest slips, guest dock, pump out, three double-wide pump out slips, general store, restrooms and showers.

LEASE TERM:

42 years, beginning April 23, 1987.

CONSIDERATION:

This lease provides that Lessor may modify the rent periodically during the lease term. Pursuant to this provision, staff has conducted a review of the rent under this lease, and recommends that the Minimum Annual Rent be continued at \$4,817 per year, against six percent of gross income from berthing and mooring of boats, effective April 23, 2015.

PROPOSED AMENDMENT:

Amend the Lease to:

1. Extend the expiration date of the lease from April 22, 2029 to April 22, 2034, to accommodate the loan term requirements for the new Agreement and Consent to Encumbrancing of Lease.
2. Include provisions that the Lessee must implement the Commission's "Best Management Practices (BMPs) for Marina Owners/Operators",

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incorporate the Commission's "BMPs for Berth Holders and Boaters" into Lessee's berth rental agreements, and include the additional BMPs the Commission subsequently deems appropriate for either of the above categories. In addition to the inclusion of the BMPs for Berth Holders and Boaters into the berth rental agreements, the Lessee shall post such publication in prominent places within the lease premises. The Lessee shall provide the Commission, on the first anniversary of the lease amendment and on each successive third anniversary thereafter, a report on compliance with all BMPs.

All other terms and conditions of the lease shall remain in effect without amendment.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On April 23, 1987, the Commission authorized a General Lease - Commercial Use to Jerrold J. Smith, Mitzi E. Smith, George M. Brahy, and Michele M. Brahy for a term of 30 years. On September 23, 1987, the Commission authorized assignment of this lease to the Lessee. On December 9, 2003, the Commission authorized an amendment to the lease to extend the lease term an additional 12 years so that the Lessee could refinance the marina. On October 6, 2004, the Commission authorized an Agreement and Consent to Encumbrancing of Lease in favor of Bank of Rio Vista, the Secured-Party Lender.
3. The Lessee is now in the process of obtaining refinancing from the Bank of Rio Vista, the Secured-Party Lender, in a loan amount not to exceed \$1,550,000. Under the terms of the new loan, the Secured-Party Lender is requiring the Lessee to pledge their interest in the lease as additional security. The Lessee is requesting a 5 -year extension of the lease term, termination of the existing encumbrancing agreement, and a new Agreement and Consent to Encumbrancing of Lease to accommodate the new loan requirements. The new loan will consolidate the previous loan balance. In approving the encumbrancing agreement, the Commission retains the right to approve any transfer from the lending institution to a prospective lessee, should a foreclosure of the loan occur.
4. **Lease Extension:** The staff recommends that the Commission find that this lease extension is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

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Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

5. **Termination and Issuance of an Agreement and Consent to Encumbrancing of Lease and Continuation of Rent:** The staff recommends that the Commission find that the subject activities do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and are, therefore, not projects in accordance with CEQA.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

6. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Lease Extension: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Termination and Issuance of an Agreement and Consent to Encumbrancing of Lease and Continuation of Rent: Find that the subject activities are not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are not projects as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

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SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Approve the continuation of the minimum annual rent for Lease No. PRC 7067.1 at \$4,817 per year, against six percent of gross income from berthing and mooring of boats, effective April 23, 2015.
2. Authorize the amendment of Lease No. PRC 7067.1, a General Lease - Commercial Use, of lands shown on Exhibit A attached and by this reference made a part hereof, effective at the close of escrow, but no later than May 31, 2014, to authorize the extension of the lease term from April 22, 2029 to April 22, 2034; and to add Best Management Practices. All other terms and conditions of the lease will remain in effect without amendment.
3. Authorize termination of the existing Agreement and Consent to Encumbrancing of Lease in favor of Bank of Rio Vista, the Secured-Party Lender, effective one day prior to the close of escrow.
4. Authorize execution of the document entitled "Agreement and Consent to Encumbrancing of Lease", and consent of the State Lands Commission to the Encumbrancing of Lease PRC 7067.1, effective at the close of escrow, but no later than May 31, 2015.

EXHIBIT A

PRC 7067.1

LAND DESCRIPTION

A parcel of tide and submerged land in the bed of the San Joaquin River adjacent to and southerly of Andrus Island, Sacramento County, California, said parcel being more particularly described as follows:

COMMENCING at the southeast corner of Parcel B as shown on the Parcel Map filed in Book 40 of Parcel Maps, Page 38, Official Records of Sacramento County; thence along the southerly line of said Parcel B, N 68°21'00" W, 54.31 feet; thence N 68°49'01" W, 69.75 feet to the TRUE POINT OF BEGINNING; thence leaving said southerly line and running into the San Joaquin River the following six courses:

1. S 17°25'00" W, 159.87 feet;
2. N 72°35'00" W, 479.00 feet;
3. S 17°25'00" W, 15.00 feet;
4. N 72°35'00" W, 477.79 feet;
5. S 88°45'00" W, 426.34 feet;
6. N 01°15'00" W, 176.80 feet to a point on said southerly line of Parcel B; thence along said southerly line the following eight courses:

7. N 77°38'53" E, 49.08 feet;
8. S 87°46'30" E, 314.48 feet;
9. N 82°49'22" E, 60.47 feet;
10. S 89°33'39" E, 122.38 feet;
11. S 64°21'00" E, 216.08 feet;
12. S 74°09'50" E, 204.06 feet;
13. S 73°16'44" E, 425.06 feet;
14. S 68°49'01" E, 56.42 feet to the point of beginning.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the San Joaquin River.

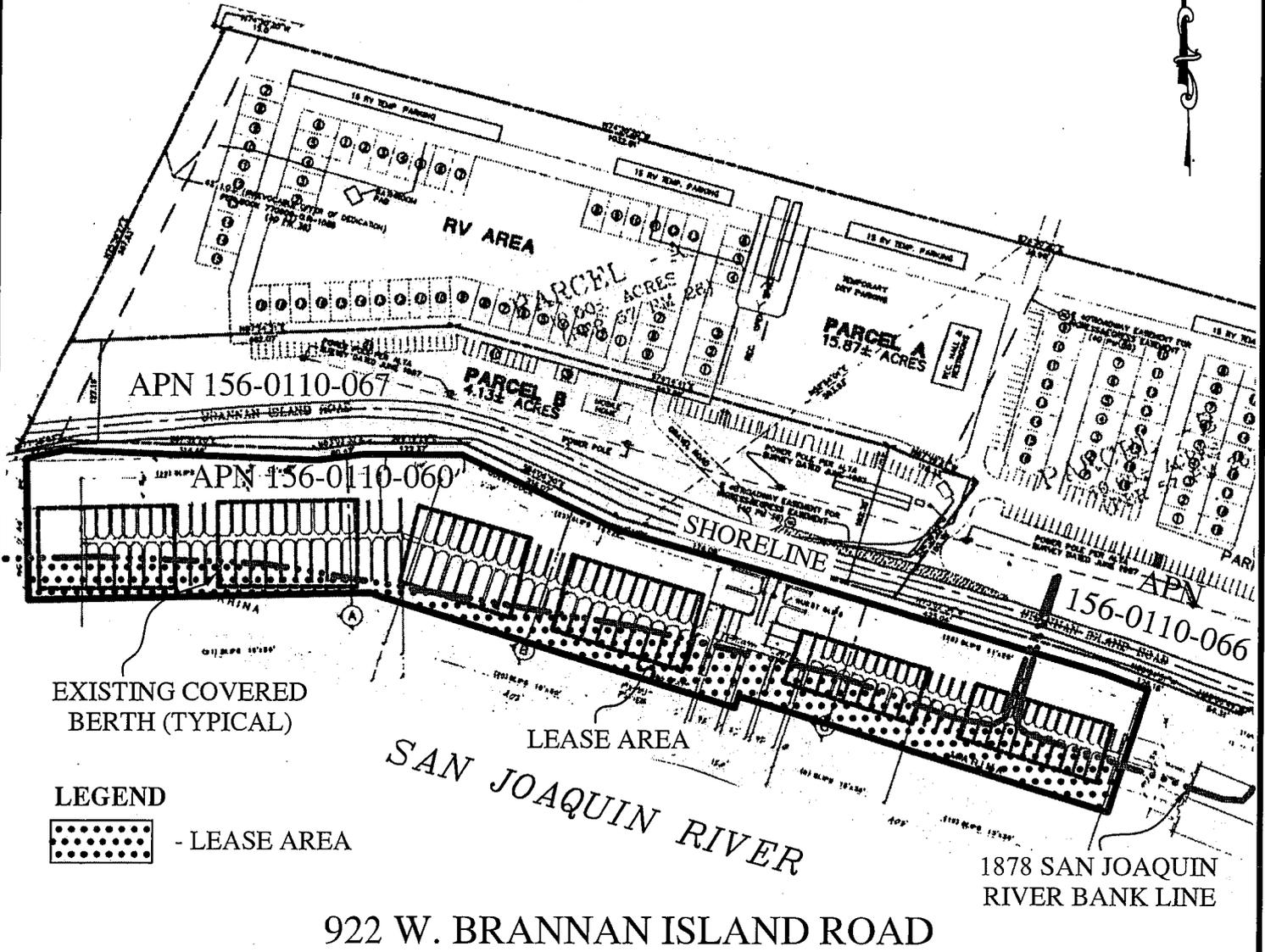
This description is based on the California Coordinate System of 1927, Zone 2.

END OF DESCRIPTION

REVISED APRIL 2, 1987, BY BOUNDARY SERVICES UNIT, M.L. SHAFER, SUPERVISOR.

NO SCALE

SITE



EXISTING COVERED BERTH (TYPICAL)

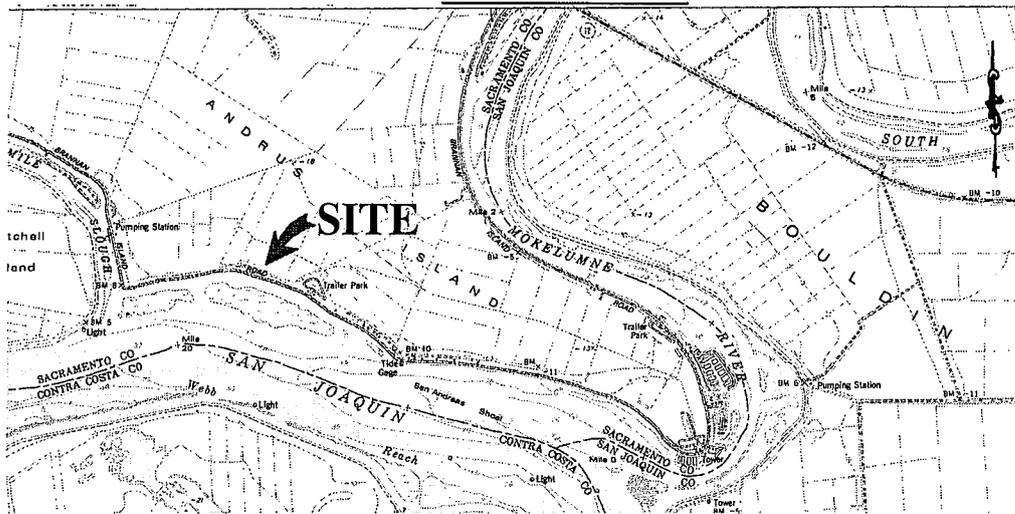
LEGEND

- LEASE AREA

922 W. BRANNAN ISLAND ROAD

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 7067.1

DELTA BAY CLUB, INC.
APNs 156-0110-060,
156-0110-067, 156-0110-066
GENERAL LEASE -
COMMERCIAL USE
SACRAMENTO COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.